Subpart G—Environmental Program

2. Exhibit M is amended by correcting paragraph 6.c.(2)(c)(i) to read as follows:

Exhibit M—Implementation Procedures for the Conservation of Wetlands and Highly Erodible Land Affecting Farmer Program Loans and Loans to Indian Tribes and Tribal Corporations

* * * * *

6. * * *
c. * * *
(2) * * *
(c) * * *

(i) *Loan term exceeds January 1, 1990, but not January 1, 1995.* If the term of the proposed loan expires within this period and the applicant intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of this exhibit until either 1990 or two years after the SCS has completed a soil survey for the borrower's land, whichever is later, the County Supervisor will determine if it is financially feasible for the applicant, prior to loss of the exemption, to actively apply a conservation plan approved by SCS or the appropriate conservation district. See § 12.23 of Subpart A of Part 12 of Subtitle A of Title 7, which is Attachment 1 of this exhibit and is available in any FmHA office, for a definition of actively applying a conservation plan. Prior to loan approval, the applicant, the lender, (if a guaranteed loan is involved), FmHA and SCS will resolve any doubts as to what extent production would be able to continue under application of a conservation plan and as to the financial implications on loan repayment ability from both the potential costs of actively applying the conservation plan and the potential loss of revenues from any reduced acreage production base. The loan approval official will determine the financial implications of actively applying a conservation plan to the applicant's highly erodible land by developing a projected farm plan of operation or other farm financial projections that reflect adequate repayment on the full scheduled installments for all debt obligations at the time the conservation plan is being actively applied. If in making this determination, loan repayment ability cannot be demonstrated, FmHA will deny the loan application. If loan repayament ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing, coincident with the transmittal of Form FmHA 1940–1, "Request For Obligation of Funds," and using Form Letter 1940–G–1, "Notification of The Requirements of Exhibit M of FmHA Instruction 1940–G," that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from the SCS issued prior to either January 1, 1990, or two years after the SCS has completed a soil survey of the applicant's land (whichever is later) and stating that the applicant is actively applying an approved conservation plan will be considered adequate demonstration of compliance on the highly erodible land affected by the 1990 deadline.

* * * * *

Signed at Washington, DC, on April 19, 1988.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 88–9152 Filed 4–25–88; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 88–052]

Horse Protection Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Horse Protection Regulations to expand the list of devices and equipment prohibited for use on any horse at any horse show, exhibition, sale, or auction. In addition to those devices already prohibited by the regulations, we are prohibiting: (1) Beads, bangles, rollers, and similar devices, except for rollers that meet the specifications in this document and that weigh no more than 6 ounces; (2) chains, boots, collars, or other devices that weigh more than 6 ounces; and (3) after a phase-in period, "full" pads more than one-half-inch high, and total pad height, including "rim" pads, of more than 1 inch. We are also prohibiting the use on any horse of weights other than horseshoes, and of horseshoes weighing more than 16 ounces each. Additionally, we are amending the regulations to clarify which horses are subject to the scar rule. These amendments are necessary to better protect horses under the Horse Protection Act.

DATE: This interim rule is effective April 25, 1988. Consideration will be given only to comments postmarked or received on or before June 27, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC, 20090–6464. Please state that your comments refer to Docket No. 88–052. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7833.

SUPPLEMENTARY INFORMATION:

Background

This background material is presented in three sections. The first provides a brief discussion of the Horse Protection Act (15 U.S.C. 1821–1831 (1982)), referred to below as the Act, and of the regulations in 9 CFR Part 11, referred to below as the regulations, that were published under the Act. The second contains a summary of the events leading to the publication of this interim rule. The third details the amendments we are making to the regulations.

Horse Protection Act and Regulations

The practice known as "soring" is the injuring of show horses to improve their performance in the show ring. The pain caused by soring accentuates the gait of show horses. Soring can be accomplished in a variety of ways, including: (1) The application of irritating solutions to the horse's limbs; (2) the fastening of chains or similar equipment (commonly called "action devices") to the horse's limbs and forefeet; (3) the use of pads to elevate the horse's foot and to manipulate the angle of the horse's foot; (4) the trimming of a horse's hoof and the shoeing of its feet so as to cause pressure or irritation on the sole of the foot (commonly called "pressure shoeing"); and (5) the insertion of an object between a pad and the sole of the foot to cause discomfort.

In 1970, Congress passed the Act to eliminate the practice of soring, by forbidding the showing or selling of sored horses. Exercising our rulemaking power under 15 U.S.C. 1824 and 1828, we issued regulations that prohibit soring devices and soring methods.

Section 11.2(a) of the regulations provides that:

> Notwithstanding the provisions of paragraph (b) of this section, no chain, boot, roller, collar, action device, method, practice, or substance shall be used with respect to any horse at any horse show, horse exhibition, or horse sale or auction if such use causes or can reasonably be expected to cause such horse to be sore.

Section 11.2(b) then lists specific prohibitions. These prohibitions make it a violation of the Act for someone to show a horse using any of the prohibited devices or practices, whether or not its use causes the horse to be sore.

Based in part on three test clinics to determine the effect of various chains and other devices on horses, we amended the regulations in 1979 (44 FR 25172–25184) to make it a violation of the Act to show a horse wearing chains weighing more than 10 ounces (8 ounces for horses under 3 years old).

Additionally, the regulations in § 11.2(b)(1), until invalidated by the Court as explained below, prohibited the use of beads, bangles, rollers, and similar action devices, except for specifically described rollers weighing no more than 14 ounces. Among other devices and practices, the regulations also prohibit the use of boots and collars that by their construction might irritate a horse's leg. However, before the publication of this interim rule, there was no weight limit on these devices. The regulations also banned the use on yearling horses of weights other than horseshoes, and of horseshoes heavier than 16 ounces. No such restrictions existed for horses other than yearlings.

Before publication of this interim rule, with one exception at 9 CFR 11.2(b)(8), the regulations did not limit the height of pads on horses. These pads are used to elevate a horse's foot to achieve the desired gait, and may be used to conceal practices that produce soring, such as pressure shoeing, or to conceal objects inserted under a horse's foot to cause discomfort. Pads may also be used to protect a horse's feet and limbs during showing and training.

Genesis of Amendments Being Made

On October 26, 1984, the American Horse Protection Association, Inc. (AHPA) filed a complaint in the U.S. District Court for the District of Columbia, asking that we be required to propose regulations banning all action devices and built-up shoes. In its complaint, the AHPA referred to a study conducted by the Auburn University School of Veterinary Medicine,[1] which indicates that the use of 10-ounce action devices will cause a horse to become sore under certain conditions. Additionally, the Auburn University study indicates that built-up shoes can cause pain and inflammation under certain conditions.

On October 30, 1985, the District Court ruled that the fact that we had not amended the regulations as the complainant had requested was not "arbitrary, capricious, or an abuse of discretion, or otherwise not in accordance with the law." (*American Horse Protection Association* v. *Block*, No. 84–3298, mem. op. at 14 (D.D.C., October 30, 1985)). The AHPA appealed the Court's decision on November 26, 1985.

[1] Purohit, Ram C. "Thermography in Diagnosis of Inflammatory Processes in Horses in Response to Various Chemical and Physical Factors (Summary of the Research from September, 1978 to December, 1982)." School of Veterinary Medicine, Auburn University.

On February 24, 1987, the U.S. Court of Appeals for the District of Columbia Circuit vacated the judgment of the District Court, remanding the case to that Court with instructions to remand the case to the Secretary of Agriculture for further consideration. (*American Horse Protection Association* v. *Lyng*, 812 F.2d 1, 258 U.S. App. D.C. 397 (D.C. Cir Feb. 24, 1987)).

After reviewing material submitted by the parties, the District Court, in an opinion filed on March 21, 1988, ordered that we intitiate rulemaking to amend and expand the list of devices prohibited by § 11.2(b). In its decision, the Court declared the Provisions of § 11.2(b)(1), (2), and (10) invalid, and ordered the Secretary of Agriculture to initiate proceedings to promulgate replacement regulations. (*American Horse Protection Association Inc.* v. *Lyng*, —— F. Supp. ——, 1988 (D.D.C., March 21, 1988)).

In its decision, the Court relied heavily on the Auburn University study, which the Court stated "clearly found that the use of 10-ounce weights caused soreness to the test horses." The Court also cited the study's finding that both pressure shoeing and the use of padded shoes to manipulate the angle of a horse's foot can cause inflammation and soreness.

As noted above, the Court invalidated the provisions of § 11.2(b)(10), which govern a horse's heel/toe ratio. In view of our decision to proceed with this interim rule, which will restrict the use of pads, the Secretary of Agriculture believes that the provisions in question are necessary under the Act, and that their retention in the regulations is consistent with the Court's opinion. Therefore, the provisions that were contained in § 11.2(b)(10) prior to publication of this interim rule shall remain in effect, and are now contained in § 11.2(b)(12).

Changes to the Regulations

We are amending the Horse Protection Regulations as described below. For purposes of clarity, we will address first the changes to § 11.2(b)(2), then the changes to § 11.2(b)(1) and other provisions of Part 11.

Action Devices

Before being invalidated by the Court, § 11.2(b)(2) of the regulations prohibited chains weighing more than 8 ounces each on 2-year-old horses, and chains weighing more than 10 ounces each on horses 3 years old or older. Based on review of the Auburn University study, we have determined that proper enforcement of the Act requires that a lower weight limit for chains be included in the regulations.

As part of the Auburn University study, three horses were fitted with 10-ounce chains, and were exercised for 10 consecutive workdays, with weekends off. One of the horses had a chain on each pastern; the other two horses had a chain on only one pastern. The study found that altered thermal patterns were detectable as early as the second day of exercise with the chains. Lesions were produced by the 7th day, becoming more visible by the 10th day. Based on the study, it is apparent that 10-ounce chains can sore a horse under certain circumstances.

The study also monitored the effects of using chains and rollers on horses with scarred pasterns, finding that 14-ounce rollers and 8- and 10-ounce chains caused lesions in less than two weeks on scarred horses that were exercised in the devices for 15–30 minutes per day.

We are amending the regulations in § 11.2(b)(2) to prohbit the use—on horses at any horse show, horse exhibition, or horse sale or auction—of chains weighing more than 6 ounces, including the weight of the fastener. While the Auburn University study found that 10-ounce chains can cause soring on unscarred horses under certain conditions, and that 8-ounce chains can sore scarred horses under certain conditions, the study found no harmful effects from the use of 6-ounce chains, except for some loss of hair in the pastern areas.

This interim rule also prohibits, in § 11.2(b)(1), the use of beads, bangles, rollers, and similar devices, with the following exception. Rollers are permitted if they are made of lignum vitae (hardwood), aluminum, or stainless steel, with individual rollers of uniform size, weight, and configuration, provided each device does not weigh more than 6 ounces, including the weight of the fastener. The provisions in § 11.2(b)(1) made effective by this interim rule are identical to those invalidated by the Court, except that we are requiring that each roller weigh 6 ounces or less.

Inspections by our personnel and members of the horse industry at horse shows, exhibitions, and sales and auctions have shown that each of the devices we are prohibiting in § 11.2(b)(1) can cause soring. We have determined it is necessary to limit the maximum weight of rollers to 6 ounces, based on the Auburn University study, which detected soring from action devices weighing more than 6 ounces, but no soring following the use of 6-ounce action devices. Similarly, we are

amending § 11.2(b)(7) to limit boots and collars to 6 ounces each.

Weights

In amended § 11.2(b)(9), we are applying to all horses the provisions of previous § 11.2(b)(9), which prohibited the use of any weight, other than the horseshoe, on yearling horses, and limited the weight of horseshoes used on yearling horses to 16 ounces. During our inspections at horse shows, exhibits, sales and auctions, we have observed the use of weights to accentuate a horse's gait. These weights were usually placed either in pads that were attached to the horse's hooves or below the pads and between the shoe bars, or were used as part of a heavy horseshoe. When these weights were used, our inspectors, using thermographic examination, noted increased inflammation in the tendons, and increased sensitivity in the joints and in other parts of the legs above the fetlocks. Therefore, we have determined it is necessary under the Horse Protection Act to prohibit the use of weights on all horses. Experienced farriers have informed us that a standard horseshoe used solely to protect a horse's hoof need not weigh more than 16 ounces.

The provisions of amended § 11.2(b)(9) make unnecessary the provisions in § 11.2(b)(17), which restrict where on a horse's foot lead or other weights can be placed. We are therefore deleting that section.

Pads

In § 11.2(b)(10), we are prohibiting, after a phase-in period explained below, the use of all "full" pads that are more than one-half-inch high at any point, and that are not placed directly adjacent to the sole of the horse's foot. We define a full pad as one that covers the entire sole of the horse's foot. Additionally, after the phase-in period, we are limiting maximum total pad height, including "rim" pads, to 1 inch. We define a rim pad as one that conforms with the configuration of the horse's shoe and does not protrude beyond the inner rim of the shoe. We are also prohibiting, as of April 25, 1988, the use of pads that are not made of leather or some similar soft, pliant material.

It would be harmful to horses to eliminate the use of all pads, because small pads are often used to prevent problems such as bruises from stones, and to absorb some of the concussive shock of the foot striking the ground. Allowing maximum pad height of 1 inch will permit continued use of pads used solely to protect a horse. Limiting full pads to one-half inch and allowing them to be placed only directly adjacent to the sole of the horse's foot will help our inspectors better detect, through palpation, pressure shoeing and the presence of objects inserted between the pad and a horse's foot to cause irritation.

We are basing our limitation on the total height of pads on a number of factors. Elevating a horse's hooves with high pads changes the normal angulation of a standing horse's body and legs, and thus changes the angulation of the normal weight-bearing surfaces of the horse's legs and the angulation of the horse's weight-bearing muscles. The use of high pads also changes the angle at which the horse's foot hits the ground, and the angle at which the toe "breaks over" when picking up the foot to go forward.

The Auburn University study and other veterinary research indicates that altering the angulation of a horse's feet and legs can cause lameness, soreness, and inflammation, by transferring concussive impact and weight-bearing pressures to joints and other parts of the horse not normally subjected to these forces. Additionally, experts in the horse industry have advised us that elevating the foot can cause an increase in tension in the tendons, which can lead to inflammation. A high pad can also contribute to stresses caused by extra weight on a horse's foot. Additionally, elevating only the front feet, as is typically done, causes an unnatural angulation of the back and body of the horse, and changes the alignment of the shoulder muscles, the vertebrae, and the pelvis, all of which are then subject to stress, irritation, and inflammation.

We have determined that pads 1 inch or less in height offer adequate protection from concussive shock and bruises from stones, without adding excessive weight or altering the natural angle of the horse's body in a way that can cause soring. By requiring that pads be made of leather or some similar soft, pliant material, the regulations will ensure that only pads that offer protection from concussive forces are used. Further, requiring that pads be of a pliant material will facilitate inspection by palpation, as described above.

It would be harmful to some horses currently on high pads to be placed on 1-inch pads without a "phasing-in" period. APHIS veterinarians, and farriers and other members of the horse industry, have indicated that horses can be moved without harm from high pads to pads 1-inch high or less, if the change is done gradually. A gradual reduction in pad size will minimize physiological stress to horses, and will allow horses who have had their feet trimmed in conjunction with the use of high pads to grow a naturally configured foot before being placed on pads 1-inch high or less. Additionally, the phase-in period we are establishing, with a reduction in maximum pad size at 3-month intervals, will allow horses to be reshod as necessary without damage to their hooves. Experienced farriers have indicated to us that a horse can be reshod every 6 to 8 weeks without harm to the horse's hooves.

Accordingly, the provisions in § 11.2(b)(10) will limit the height of pads according to the following schedule. From April 25, 1988 through July 31, 1988, pads more than 3 inches high are prohibited. From August 1, 1988 through October 31, 1988, pads more than 2 inches high will be prohibited. After October 31, 1988, full pads will be limited to one-half-inch in height, and total pad height, including rim pads, will be limited to 1 inch. During and following this phasing-in period, the requirements in the regulations regarding heel/toe ratio must be observed.

Because the provisions regarding a 1-inch-maximum pad height will apply to all horses after October 31, 1988, we are amending the provisions of § 11.2(b)(8), which prohibits the use on yearling horses of pads that elevate or change the angle on the horses' hooves more than 1 inch at the heel, to make them effective only through October 31, 1988.

We emphasize that the regulations continue to prohibit the soring of a horse by any device, regardless of weight or height, and we will take action against any person responsible for soring a horse.

The comment period regarding this interim rule is intended to provide all interested and affected parties adequate opportunity to compile and supply us with as much data as possible regarding the issues raised in this document. In addition, we invite any sound scientific studies that may augment the information currently available regarding the use of action devices, pads and weights on show horses. All information received will be carefully considered in preparing a final rule.

Scar Rule

Section 11.3 of the current regulations provides that a horse will be considered sore if its legs show bilateral scarring or loss of hair that can reasonably be identified with the practice of soring. These provisions are commonly known as the "scar rule." The regulations regarding the scar rule prior to publication of this interim rule were established in 1979. The rule was

intended to apply during the 1979 show season to all horses 3 years old or younger at the time. Our intent was then to apply the scar rule provisions to horses 4 years old or younger in 1980, 5 years old or younger in 1981, and so forth. Since 1979, we have been enforcing the scar rule provisions according to that formula. However, until publication of this interim rule, § 11.3 stated that it applied to "all 3-year-old horses during the 1979 season; 4-year-old horses during the 1980 season, 5-year-old horses during the 1981 season, etc." As written, the rule might have been interpreted to apply only to horses of the exact age specified for a given year. We are amending that section to read: "The scar rule applies to all horses born on or after October 1, 1976." With this change, the scar rule is corrected to conform with our intention.

Request for Comments on Additional Subjects

We recognize that some horses may have a faulty way of "going"—*i.e.*, some abnormality in the way they move, such as interfering, or overreaching—or may have a condition such as Navicular Disease or Bone Spavin that causes pain if corrective shoeing is not done. These conditions may require the use of pads or wedges in excess of 1 inch, or weights on the foot to correct the horse's gait and prevent possible harm to the horse. Based on our inspections at horse shows and other events, however, we believe that these defects are limited to a small number of horses presented for showing. By recognizing that a need for correction sometimes exists, we do not intend to allow built-up pads or other devices for the purpose of accentuating a horse's gait, nor do we intend to allow the excessive build-up of the feet of horses with a faulty way of going. At this time, we are requesting comments that address these problems. Specifically, we are inviting comments on the following questions: (1) What conditions should make a show horse eligible for corrective shoeing; (2) what limits should be placed on the pads, wedges, and weights used for corrective shoeing; and (3) how can corrective shoeing, if allowed, be documented or controlled?

In addition to requesting comments on this interim rule and on corrective shoeing, we are requesting comments on methods used to mask the pain caused by soring. In its petition for rulemaking, the AHPA alleged that some horse trainers and exhibitors are concealing soring by using anesthetics or analgesics on the animals. Further, the AHPA expressed concern that the practice of "stewarding," or conditioning horses not to react to pain, can make it difficult to detect soring. We believe that these practices, if and where they exist, should be stopped. At this time, we need more information on the use of these practices, including when and where they are occurring, and how prevalent they are, to help determine what action, if any, we should take.

Emergency Action

The Acting Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists, which warrants publication of this interim rule without prior notice and opportunity for public comment.

On March 21, 1988, the United States District Court for the District of Columbia issued an order invalidating certain provisions of the Horse Protection Regulations that prohibited or restricted the use on horses—at horse shows, exhibits, and sales and auctions—of chains and other action devices that can cause soring. The Court also invalidated provisions governing the heel/toe ratio of horses at the above events. The Court determined that the invalidated regulations did not properly protect horses from soring under the Horse Protection Act, and directed us to initiate rulemaking proceedings immediately to establish replacement regulations.

On March 25, 1988, we issued a letter to members of the horse industry, in light of the Court's decision, setting forth the enforcement position we were adopting for the period between issuance of the letter and publication of replacement regulations. On April 13, 1988, the Court emphasized that its invalidation of the above-specified provisions of the Horse Protection Regulations had taken effect on March 21, 1988.

In the absence of replacement regulations, there has been substantial confusion among members of the horse industry concerning their obligations under the Horse Protection Act. To eliminate this confusion, and to establish as quickly as possible replacement regulations that prohibit practices and devices to prevent soring, we are publishing this interim rule and request for comments. This rule is consistent with the Court's opinion and is based on sound veterinary principles. Making it effective without prior comment will enable the Secretary to better enforce the Act.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective April 25, 1988. We will consider comments postmarked or received within 60 days of the publication of this interim rule in the **Federal Register.** Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this interim rule in conformance with Executive Order 12291 and Departmental Regulation 1512–1, and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions, and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This interim rule is intended to prevent the soring of horses, and specifically prohibits devices that could reasonably be expected to cause soring. Some of the devices that are being prohibited are currently used on horses to accentuate the natural gait of show horses. Prizes for competition among these show horses are awarded based largely on evaluation of this gait. The new prohibitions of this interim rule will not prohibit equitable competition among these show horses.

Under these circumstances, the Acting Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Humane animal handling, Soring of horses.

Accordingly, 9 CFR Part 11 is amended as follows:

PART 11—HORSE PROTECTION REGULATIONS

1. The authority citation for Part 11 is revised to read as follows:

Authority: 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

2. Section 11.1 is amended by removing all paragraph designations, by placing all definitions in alphabetical order, and by adding definitions of "full pad" and "rim pad" to read as follows:

§ 11.1 Definitions.

* * * * *

"Full Pad" means a pad that covers the entire sole of a horse's foot.

* * * * *

"Rim Pad" means a pad that conforms with the configuration of a horse's shoe, and does not protrude beyond the inner rim of the shoe.

* * * * *

3. Section 11.2 is amended by removing paragraph (b)(17), by redesignating paragraphs (b)(10) through (b)(16) as (b)(12) through (b)(18) respectively; and by adding new paragraphs (b)(10) and (b)(11) and revising paragraphs (b)(1), (b)(2), (b)(7), (b)(8) and (b)(9) to read as follows:

§ 11.2 Prohibitions concerning exhibitors.

* * * * *

(b) * * *

(1) All beads, bangles, rollers, and similar devices, with the exception of rollers made of lignum vitae (hardwood), aluminum, or stainless steel, with individual rollers of uniform size, weight and configuration, provided each such device may not weigh more than 6 ounces, including the weight of the fastener.

(2) Chains weighing more than 6 ounces each, including the weight of the fastener.

* * * * *

(7) Boots, collars, or any other device, with protrusions or swellings, or rigid, rough, or sharp edges, seams or any other abrasive or abusive surface that may contact a horse's leg, or that weigh more than 6 ounces each.

(8) Through October 31, 1988, pads or other devices on yearling horses (horses up to 2 years old) that elevate or change the angle of such horses' hooves in excess of 1 inch at the heel.

(9) Any weight, except a keg or similar conventional horseshoe, and any horseshoe that weighs more than 16 ounces.

(10) Pads between the bottom of the foot and the horseshoe, according to the following schedule:

(i) From April 25, 1988 through July 31, 1988, pads more than 3 inches high at any point;

(ii) From August 1, 1988 through October 31, 1988, pads more than 2 inches high at any point; and

(iii) After October 31, 1988, full pads more than one-half-inch high at any point and full pads not directly adjacent to the sole of a horse's foot, and total pad height, including rim pads, exceeding 1 inch.

(11) Pads that are not made of leather or a similar soft, pliant material.

* * * * *

4. Section 11.3 is amended by revising the introductory text to read as follows (footnote 3 is removed and reserved):

§ 11.3 Scar rule.

The scar rule applies to all horses born on or after October 1, 1976. Horses subject to this rule that do not meet the following scar rule criteria shall be considered to be "sore" and are subject to all prohibitions of section 5 of the Act. The scar rule criteria are as follows:

* * * * *

Done in Washington, DC, this 22nd day of April, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-9265 Filed 4-25-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 048CE, Special Condition 23-ACE-39]

Special Conditions; Dornier 228-200 Airplanes With Electronic Flight Instrument Systems (EFIS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued to become part of the type certification basis for the Dornier 228-200 Airplanes that incorporate an electronic flight instrument system (EFIS). These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards applicable to these airplanes when EFIS is installed. These novel and unusual design features include the use of a cathode-ray tube electronic flight instrument system for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: April 26, 1988.

FOR FURTHER INFORMATION CONTACT: Ervin E. Dvorak, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 1987, AAR Oklahoma, Inc., Oklahoma City, Oklahoma submitted an application for supplemental type certificate (STC) approval of the design changes necessary to install a Collins 85B Electronic Flight Instrument System (EFIS) on the Dornier 228-200 Airplane. This installation incorporates an electronic attitude director indicator (EADI) and electronic horizontal situation indicator (EHSI) in lieu of the traditional mechanical or electro-mechanical displays providing similar information to the flightcrew.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.101(b)(2).

The proposed type design of the Collins 85B EFIS installation in the Dornier 228-200 Airplane contains a number of novel and unusual design features not envisaged by the applicable Part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of Part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the Collins 85B EFIS installation in the Dornier 228-200 Airplane.

AAR Oklahoma, Inc. has proposed cathode-ray tube (CRT) electronic display units for primary attitude, heading, and navigation cockpit displays. The cockpit instrument panel

configuration would feature five EFIS displays, an electronic horizontal situation indicator (EHSI) in the left and right instrument panels and a multifunction display in the center panel. All other displays; i.e., airspeed, altitude, vertical speed, etc., will be conventional instruments. A back-up conventional attitude instrument will be near the center of the panel.

Emissive color on a CRT display will inevitably appear different than reflective colors on conventional electro-mechanical displays. Different intensities and color temperatures of ambient illumination will also affect the perceived colors. Therefore, display legibility must be adequate for all cockpit lighting conditions including direct sunlight.

Features of this system are novel and unusual relative to the applicable airworthiness requirements. Current small airplane airworthiness requirements are based on "single-fault" or "fail-safe" concepts and, when promulgated, the FAA did not envision use of complex, safety-critical systems in small airplanes. The current small airplane requirements envisioned instruments that were single function; i.e., a failure would cause loss of only one instrument function, although several instrument functions may have been housed in a common case.

Flight instruments for the pilot are required to be grouped in front of the pilot so deviation from looking forward along the airplane flight path is minimized when the pilot shifts from viewing the flight path to viewing the flight instruments.

For instrument flight, the airplane must be equipped with the minimum flight instruments listed in the operating rules. This minimum listing of instruments includes all instruments that have long been accepted as the minimum for continued safe flight. Back-up instruments for these instruments are not required by the small airplane airworthiness requirements because the FAA has long accepted that the small airplane could be safely flown following a single instrument failure. The basic airman certification program for an instrument flight rules (IFR) rating has long included the required demonstration of ability to fly the airplane safely following failure of any one of the previously cited instruments and has not required, as a basic IFR rating requirement, that all IFR rated airmen must demonstrate abilities using other back-up instruments.

The special condition would allow installation of electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument, display, or system. The special condition would also provide requirements to assure adequate reliability of system design functions that are determined to be essential for continued safe flight and landing of the airplane.

In installations where electronic displays take the place of traditional instruments, the reliability must not be less than that of the traditional instruments. This is in regard to the collective reliability of the traditional instruments rather than the reliability of a single traditional instrument. For this reason, the special condition includes requirements for identifying complex, safety critical systems, and defines requirements needed for their certification.

The special condition will also require a detailed examination of each item of equipment/component of the electronic display system, and installation of the system, to determine if the airplane is dependent upon its function for continued safe flight and landing, or if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with these adverse operating conditions. Each component of the installation identified by such an examination as being critical to the safe operation of the airplane would be required to meet the special condition.

The present § 23.1309 has been used as a means of evaluating systems since being incorporated into 14 CFR Part 23 by amendment 23–14, dated December 20, 1973. The "no-single-fault" or "fail-safe" concept of § 23.1309, along with experience based on service-proven designs and good engineering judgement have been used to successfully evaluate most airplane systems and equipment. However, the FAA is finding it difficult to apply the "single-fault" concept as a means of determining the effect or likelihood of certain failure conditions to complex systems like those proposed for the Collins 85B EFIS installation. Therefore, the FAA considers it necessary to include the proposed additional system analysis requirements in the certification basis. This will also allow the use of the latest available "rational method" of safety analysis of the systems to assure a level of safety intended in the applicable requirements.

The development of rational methods for safety assessment of systems is based on the premise that an inverse relationship exists between the probability of a failure condition and its effect on the airplane. That is, the more serious the effect, the lower the probability must be that the related failure condition will occur.

Use of these rational methods for safety assessment of systems does not mandate use of numerical analysis. An applicant may use numerical analysis to assist in showing compliance but, in many cases, adequate data is not available for preparing a stand-alone numerical analysis for showing compliance. Therefore, in small airplane certification, a rational analysis based on identification of failure modes and their consequences is frequently acceptable substantiation of compliance with the various required levels of system reliability rather than a numerical analysis alone.

If it is determined that the airplane includes systems that perform more critical functions, it will be necessary to show that those systems meet more stringent requirements. Systems that perform a function that is needed for continued safety of flight and landing of the airplane, whose failure would be catastrophic, would be required to meet requirements that establish either that there will be no failures of that system, or that a failure is extremely improbable.

The special condition also requires that the occurrence of system(s) failures which would significantly reduce the airplane's capability, or the ability of the crew to cope with adverse operating conditions, and thereby be potentially catastrophic, be improbable. It is recognized that any system(s) failure will reduce the airplane's or crew's capability by some degree, but that reduction may not be of the degree as to lead to potentially catastrophic results.

The special condition provides reliability requirements which are based on the criticality of the system's function and will provide the standards needed for certification of complex safety-critical systems being proposed for installation.

Type Certification Basis

The type certification basis for the Dornier 228–200 Airplanes is as follows: Special Federal Aviation Regulation (SFAR) 41C, effective September 13, 1982; Part 23 of the Federal Aviation Regulations (FAR), effective February 1, 1965, through amendments 23–23 and special conditions adopted by this rulemaking action.

Discussion of Comments

Notice of Proposed Special Conditions, Notice 23–ACE–39, Docket 048CE, was published in the **Federal Register** on February 1, 1988 (53 FR 20) and comment period closed March 2, 1988. The FAA received no comments in response to Notice 23–ACE–39;

therefore, these special conditions are adopted as proposed.

Conclusion

This action affects only specified model series airplanes. It is not a rule of general applicability and applies only to the series and models of airplanes identified in these special conditions.

The notice of proposed special conditions for installation of the Collins 85B EFIS installation in the Dornier 228–200 Airplanes was published in the **Federal Register** on February 1, 1988, with a closing date for submitting written comments to the docket of March 2, 1988. No comments were received and the final special conditions are adopted as proposed.

Section 553 of the Administrative Procedures Act provides, at the discretion of the agency, that an effective date of less than a required 30 days from date of publication may be established if good cause has been shown to establish an immediate effective date. It has been shown by the manufacturer that immediate sale of subject model airplane is dependent upon the ability to proceed with the certification of the EFIS installation. Because the delay of 30 days would significantly affect the manufacturer in terms of loss of revenue in the sale of subject airplanes, coupled with the fact that no comments were received concerning the notice, the Administrator finds that delaying the effective date of the special conditions is unnecessary. Thus, the Administrator finds that good cause exists to establish an immediate effective date for these final special conditions. Therefore, the Administrator has determined that these final special conditions shall become effective immediately upon issuance.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

In consideration of the foregoing, the following special condition is issued as part of the type certification basis for the Dornier 228–200 Airplane that incorporates an electronic flight instrument system (EFIS) into these series airplanes, as follows:

1. In addition to Appendix A of Part 135 and in lieu of § 23.1309(b) and applicable requirements of Part 23 of the Federal Aviation Regulations to the contrary, for instruments, systems, and installations whose design incorporates electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system, and/or system design functions that are determined to be essential for continued safe flight and landing of the airplane, the following special condition applies:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine if the airplane is dependent upon its function for continued safe flight and landing, and if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination upon which the airplane is dependent for continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following requirements:

(1) It must be shown that there will be no single failure or probable combination of failures under any anticipated operating condition which would prevent the continued safe flight and landing of the airplane, or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no single failure or probable combination of failures under any anticipated operating condition which would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions and to enable them to take appropriate corrective action. This warning information must not tend to initiate crew action which would create additional hazards.

(4) Compliance with the requirements of this special condition must be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunction and damage from forseeable sources;

(ii) Consequences of a single failure or probable combination of failures (latent or undetected);

(iii) Appropriate levels of reliability as determined by the severity of consequence;

(iv) The resulting effects on the airplane and occupants, considering the state of flight and operating conditions; and

(v) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numerical analysis may be used to support the engineering examination.

(b) Electronic display units, including those incorporating more than one function, may be installed in lieu of mechanical or electro-mechanical instruments if:

(1) The display units:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight;

(ii) In any normal mode of operation do not inhibit the primary display of attitude; and

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units.

(2) The display units, including their systems and installations, must be designed so that one display of information essential to safety and successful completion of the flight will remain available to the pilot, without need for immediate action by any crewmember for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this special condition.

Issued in Kansas City, Missouri, on March 28, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88–9042 Filed 4–25–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 79–CE–09–AD; Amdt. 39–5901]

Airworthiness Directives; Cessna 140A, 150, A150, 170, 172, R172, 175, P172, 177, 180, 182, 185/A185, 188/A188, 205, 206, U206/TU206, P206/TP206, 207/T207, 210/T210, 336, and 337/T337 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises and reissues Airworthiness Directive (AD) 79–10–14, Amendment 39–3475, applicable to certain Cessna single and twin engine airplanes to include current design fuel caps that can be installed as an alternate or equivalent means of compliance with the venting requirements of this AD. There have been several instances of fuel tank vent system obstruction by foreign material and/or sticking of the fuel vent valve in the existing fuel tank vent system. This action will reduce the possibility of fuel tank vent obstruction and resulting engine power loss.

EFFECTIVE DATE: May 30, 1988.

ADDRESSES: Cessna Service Letters No. SE77–6 dated March 4, 1977, and ME78–47 (Rev. 1) dated February 12, 1979, and Cessna Single Engine Service Kit SK182–85 dated September 21, 1984, applicable to this AD may be obtained from Cessna Aircraft Company, Customer Service,

P.O. Box 1521, Wichita, Kansas 67201, or may be examined at the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 79–CE–09–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, ACE–140W, Federal Aviation Administration, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone 316–946–4427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations AD 79–10–14, Amendment 39–3475 was published on January 27, 1988, in the **Federal Register** (53 FR 2227). AD 79–10–14, Amendment 39–3475 (44 FR 29435; May 21, 1979) as corrected (44 FR 36168; June 21, 1979), required that certain single and twin engine Cessna airplanes be provided with an alternate (redundant) fuel tank vent. The Light Single Engine (LSE) Cessna airplanes, which were all manufactured with raised fuel tank filler necks, complied with paragraph (A) of AD 79–10–14 by installing vented fuel caps (like those used on later production airplanes) to replace the original non-vented caps, or paragraph (B) by incorporating the provisions of Supplemental Type Certificate (STC) approved designs to add venting in the original non-vented fuel cap.

High performance single engine Cessna airplanes were originally manufactured with recessed fuel filler openings and flush non-vented fuel caps. These airplanes initially complied with AD 79–10–14 by applying methods similar toparagraph (A) or (B) above. At the time of issuance of AD 79–10–14, hardware was not available to adapt the LSE style fuel caps to high performance single engine Cessna airplanes. Cessna currently provides adapters for installation of the LSE style fuel caps on most of the high performance single engine airplanes affected by AD 79–10–14. These caps were originally provided by Cessna in support of a fleet campaign to restrict the diameter of the fuel filler opening on gasoline powered airplanes to prevent misfueling. However, the ability of the LSE style fuel caps to prevent the entrance of rainwater into the fuel tanks has been recognized for some time. Therefore, the FAA proposed to reduce the regulatory burden and permit the installation of the LSE fuel caps on high performance single engine Cessna airplanes by allowing the installation of these fuel caps as an equivalent means of compliance with AD 79–10–14.

Interested persons have been afforded an opportunity to comment on the proposal.

One comment from a user sponsored organization concurred with the proposed amendment. The only other comment was from a person that owned one of the Supplemental Type Certificate (STC) approved designs previously listed on AD 79–10–14. This commenter requested that his current STC be included on the final issuance of the proposal. The proposed change does not affect the cost of compliance with AD 79–10–14 and the new STC is an acceptable means of compliance. Accordingly, the final rule will reflect this change as well as some minor editorial revisions.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending and reissuing AD 79–10–14, Amendment 39–3475 (44 FR 29435; May 21, 1979) as corrected (44 FR 36168; June 21, 1979), as follows:

Cessna: Applies to the following Models and serial numbered airplanes, certificated in any category.

Models	Serial Numbers
140A	15200 through 15724.
150	617, 628, 649, 17001 through 17999, 59001 through 59018; 15059019 through 15077005.
A150	15064970, A1500001 through A1500609.
170	609, 18729 through 27169.
172	610, 612, 615, 622, 625, 630, 638, 28000 through 29999, 36000 through 36999, 46001 through 47746, 17247747 through 17265684.
175	619, 28700A, 55001 through 56777, 17556778 through 17557119.
P172	P172257120 through P17257188.
R172	P17257189, R1720001 through R1720617.
177	661, 17700001 through 17701471, 17701473 through 17701597.
180	604, 624, 645, 30000 through 32999, 50001 through 50911, 18050912 through 18052202.
182	613, 631, 634, 33000 through 34999, 51001 through 53007, 18253008 through 18260638.
185/A185	632, 185–0001 through 185–1599, 18501600 through 18501896.
188/A188	With wing tanks; Serials; 653, 188–0446 through 188–0572, 18800573 through 18800762.
205	641, 205–0001 through 205–0577
206	206–0001 through 206–0275.
U206/TU206	U206–0276 through U206–1444, U20601445 through U20601666.
P206/TP206	P206–0001 through P206–0603, P20600604 through P20600647.
207/T207	20700001 through 20700203.
210/T210	616, 618, 57001 through 57575, 21057576 through 21059361, T210–0001 through T210–0454.
336	336–0001 through 336–0195.
337/T337	337–0001 through 337–1193, 33701194 through 33701405.
M337B	337–0001 and up.

Compliance: Required as indicated, unless already accomplished.

To provide an alternate source of fuel tank venting in case of fuel tank vent obstruction by foreign material and/or sticking of the fuel vent valve, within the next 100 hours time-in-service after the effective date of this AD, accomplish the following:

(A) Install applicable vented fuel cap(s) with related adapters and fuel servicing placards in accordance with Cessna Service Letter SE77–6 dated March 4, 1977; or as an alternative for fuel bladder equipped airplanes, Cessna Service Kit SK182–85 dated September 21, 1984, or modify existing fuel tank caps in accordance with STC SA728NW, SA3318NW or SA2967SW and for 336 and 337/T337 Series airplanes, in accordance

with Cessna Service Letter ME78-47 (Rev. 1) dated February 12, 1979.

Note 1: On those airplanes having two fuel tank caps in each fuel tank, only one vented cap is required in each tank. A vented cap must be installed in the outboard filler opening of each tank.

(B) The modification required by this AD may be accomplished by those owner/operators authorized to perform preventive maintenance under FAR 43 provided only installation of a different fuel tank cap is necessary. The person accomplishing this modification must make an entry in the aircraft maintenance record indicating compliance with this AD; i.e., "AD 79-10-14 complied with by installing replacement fuel filler cap; Cessna P/N ——— this date ——— Signature and Certificate Number."

(C) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Company, Customer Service, P.O. Box 1521, Wichita, Kansas 67201; or may examine the document(s) referred to herein at the Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Note 2: Supplemental Type Certificates SA728NW and SA3318NW are held by Mr. Dennis H. Ward, Venting Engineering, 5420 A Street, Tacoma, Washington 98408, Phone (206) 474-6458. Supplemental Type Certificate SA2967SW is held by Mr. Charles M. Seibel, Flight Bonus Inc., P.O. Box 665, Hurst, Texas 76053, Phone (817) 265-1650.

This amendment revises AD 79-10-14, Amendment 39-3475, effective May 29, 1979, which superseded AD 78-26-09, Amendment 33-3379.

This amendment becomes effective on May 30, 1988.

Issued in Kansas City, Missouri, on April 13, 1988.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88-9051 Filed 4-25-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 82-CE-27-AD; Amdt. 39-5898]

Airworthiness Directives; Piper Models PA-24, PA-24-250, PA-24-260, and PA-24-400 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, rescission.

SUMMARY: This amendment rescinds Airworthiness Directive (AD) 82-19-01, Amendment 39-4474 (47 FR 46252) which requires inspections for cracks in the lower wing spar and upper main spar attachment plate on Piper Models PA-24, PA-24-250, PA-24-260, and PA-24-400 airplanes. This AD was issued following an inflight wing failure on a Piper PA-24 airplane. Subsequent to its issuance, the FAA has determined that this failure was an isolated occurrence and is not likely to exist or develop in other Piper model airplanes of the same design.

EFFECTIVE DATE: April 27, 1988.

ADDRESSES: Information applicable to this action may be examined at the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 82-CE-27-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Perry, Atlanta Aircraft Certification Office, ACE-120A, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-2910.

SUPPLEMENTARY INFORMATION: AD-82-19-01, Amendment 39-4474 (47 FR 46252), was issued to require inspection of the lower wing spar and upper main spar attachment plate on Piper Models PA-24, PA-24-250, PA-24-260, and PA-24-400 airplanes. It was issued following an inflight wing separation of a Piper Model PA-24, Serial Number 24-1113, on July 24, 1982, at Kalamulka, B.C., Canada. Investigation of this accident revealed that both wing spars and the main spar attachment plate showed evidence of fatigue failure. At that time, there was no basis to conclude that this accident was unique and as a result the above AD was issued.

Subsequently, a petition for exemption from AD 82-19-01 was requested on behalf of Piper airplane owners and operators. In support thereof the petitioner suggested that the accident was an isolated occurrence because the airplane was regularly abused with excessive "G" forces and aerobatics. He further stated, that in the four years since the AD has been in effect, about 12,000 spar inspections have been performed with no reports of spar cracks or failure.

The FAA has carefully reviewed all of the available information including a credible fatigue analysis, and determined that the wing failure which led to the issuance of AD 82-19-01 was a singular incident and that this failure is not likely to exist or develop in other Piper Models PA-24, PA-24-250, PA-24-260, or PA-24-400 airplanes. To further substantiate this position, Piper has completed a more sophisticated inspection procedure to inspect for cracks that might emanate from the rivet hole from which it was believed the fatigue crack initiated on the accident airplane. The rivets that attach the skin to the bottom left and right wing main spar were removed to gain access to the spar bottom cap so that a much smaller crack could be detected. The area was visually inspected using 10-power magnification and a fluorescent penetrant inspection. The inspections were completed on 10 high-time airplanes by Piper under the surveillance of the FAA, and the inspection program and its results were recorded in Piper Report No. VB-1345. No cracks were detected during this inspection program.

Based on the foregoing, the FAA concludes that AD 82-19-01 should be rescinded. Since the AD, until withdrawn, imposes an economic burden and is a hardship on affected owners/operators, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and that good cause exists for making this amendment effective in less than 30 days.

The action set forth in this amendment is promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this amendment is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unnecessary, economic burden on affected owners/operators. If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption **"ADDRESSES"** at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration